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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARGARITO T. LOPEZ
individually and as successor in
interest to Margarito E. Lopez,
Deceased; SONIA TORRES, KENI
LOPEZ, and ROSY LOPEZ,
individually,

Plaintiffs,

vs.

CITY OF LOS ANGELES; JOSE ZAVALA; JULIO QUINTANILLA; and DOES 1-10, inclusive.

Defendants

Case No.: 2:22-cv-07534-FLA-MAAx
Hon. Judge Fernando L. Aenlle-Rocha,
Hon. Mag. Maria A. Audero

**PLAINTIFFS' EX PARTE
APPLICATION TO QUASH
DEFENDANTS JOSE ZAVALA AND
JULIO QUINTANILLA'S THIRD
PARTY SUBPOENA ON RIVERSIDE
COUNTY SHERIFFS'
DEPARTMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Filed concurrently herewith Declaration of Shannon Leap, Declaration of Michael S. Carrillo, [Proposed] Order.

1 **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL:**

2 PLEASE TAKE NOTICE THAT pursuant to Federal Rules of Civil
 3 Procedure 7, 16, and 40, and Local Rules 7-19, 7-19.1, and 7-20, Plaintiffs
 4 MARGARITO T. LOPEZ individually and as successor in interest to Margarito E.
 5 Lopez, Deceased; SONIA TORRES, KENI LOPEZ, and ROSY LOPEZ,
 6 individually hereby move the Court *ex parte* for an Order to Quash Defendants Julio
 7 Quintanilla and Jose Zavala's subpoena issued to the Riverside County Sheriffs'
 8 Department. If this Court finds that it is unable to rule on Plaintiffs' motion because
 9 the Fact and Expert Discovery Cutoff dates have passed, then Plaintiffs respectfully
 10 request this Court to modify the Scheduling Order (Dkt. No. 44). to reopen Fact
 11 Discovery (pursuant to FRCP Rule 16(b)(4)) for the sole purpose of this Court
 12 considering Plaintiffs' instant *ex parte* application.

13 The grounds for Plaintiffs' motion are as follows:

- 14 1. Defendants Jose Zavala and Julio Quintanilla issued a subpoena to the
 15 Riverside County Sheriffs' Department on or about March 20, 2024,
 16 purportedly requesting the employment and personnel records of Plaintiffs'
 17 retained expert, Scott A. Defoe. (Declaration of Shannon J. Leap ("Leap
 18 Decl.") at ¶ 2).
- 19 2. Defendants did not provide notice of or serve the subpoena on Plaintiffs or
 20 their counsel, in violation of Federal Rules of Civil Procedure, Rule 45. (Leap
 21 Decl. at ¶ 3; Declaration of Michael S. Carrillo ("Carrillo Decl.") at ¶ 2-3).
- 22 3. The purported date of compliance for the subpoena was April 8, 2024. (Leap
 23 Decl. at ¶ 2).
- 24 4. Fact discovery closed on February 20, 2024. Dkt. No. 44.
- 25 5. Initial Expert Disclosures were exchanged on February 16, 2024. Expert
 26 Discovery closed on March 29, 2024. Dkt. No. 44.

- 1 6. The documents Defendants request by way of their subpoena are privileged
 2 and outside the scope of Federal Rules of Civil Procedure, Rule 26.
- 3 7. On April 2, 2024, Plaintiffs' Counsel, Shannon J. Leap, received a phone call
 4 from attorney Steven Sherman, notifying her that he represented the Riverside
 5 County Sheriffs' Department, and that he had received this subpoena from
 6 Defendants Julio Quintanilla and Jose Zavala on March 20, 2024 with a date
 7 of compliance of April 8, 2024. Ms. Leap notified Mr. Sherman that Plaintiffs
 8 were never served with, nor notified of that subpoena and notified Mr.
 9 Sherman of the discovery cutoff deadlines in effect in this case and that
 10 Plaintiffs would be objecting to the release of Mr. DeFoe's records. (Leap
 11 Decl. at ¶ 2-4).
- 12 8. On April 3, 2024, Plaintiffs served on all parties, including Mr. Sherman as
 13 the attorney for the third party, Riverside County Sheriffs' Department,
 14 Plaintiffs' Notice of Objections to Defendant's Subpoena. (Leap Decl. at ¶ 4,
 15 See Ex.1 attached to Leap Decl.). Plaintiffs' counsel also sent a letter to Mr.
 16 Sherman requesting that his client not produce the records for the reasons
 17 stated in the Notice of Objections. (Leap Decl. at ¶ 4, See "Ex. 2" to Leap
 18 Decl.), and a meet and confer letter to counsel for Julio Zavala and Jose
 19 Quintanilla requesting they withdraw their subpoena. (Leap Decl. at ¶ 4, See
 20 "Ex. 3" to Leap Decl.).
- 21 9. On April 5, 2024, Ms. Leap and defense counsel Sherry Lawrence received an
 22 email from Mr. Sherman notifying them that his client would not be
 23 producing the records for the reasons stated in Plaintiffs' Notice of
 24 Objections. (See "Ex. 4" to Leap Decl.).
- 25 10. On April 5, 2024, defense counsel Muna Busailah sent an email notifying
 26 Plaintiffs' counsel that Defendants Julio Quintanilla and Jose Zavala would
 27

1 not be withdrawing their subpoena, although she provided no basis or
 2 authority for that position. (Leap Decl. at ¶ 6).

3 11. On April 9, 2024, Ms. Leap received a phone call from Mr. Sherman advising
 4 her that Ms. Lawrence insisted that the Riverside County Sheriffs'
 5 Department produce the employment records. (Leap Decl. at ¶ 7).
 6 Plaintiff is unable to file this as a regularly-noticed motion because
 7 Defendants failed to properly serve this subpoena on all parties prior to the
 8 discovery cutoff deadlines. Plaintiffs did not create the need for this to be heard on
 9 an *ex parte* basis because Plaintiffs were not served or notified of the Subpoena, as
 10 Federal Rule of Civil Procedure 45 requires. Moreover, Plaintiffs did not learn
 11 about the subpoena until after the close of expert discovery, inhibiting Plaintiffs'
 12 ability to go through the normal procedures of requesting and Informal Discovery
 13 Conference with Magistrate Judge Maria A. Audero. Additionally, the grounds for
 14 considering/hearing Plaintiff's motion on an *ex parte* basis are as follows: (a)
 15 Plaintiffs served a Notice of Objections to Defendants Subpoena as soon as
 16 Plaintiffs learned about the Subpoena in an effort to resolve this informally and
 17 without court interference; (b) Counsel for the third party, Mr. Sherman, notified all
 18 counsel for all parties that he would not be complying with the subpoena based on
 19 Plaintiffs' objections; (c) Counsel for the individual defendants refuse to withdraw
 20 their subpoena, despite its obvious procedural defects; (d) the records sought are
 21 privileged; (e) If necessary, good cause exists to modify the scheduling order to
 22 enable this Court to consider Plaintiffs' application and proposed motion in support
 23 thereof.

24 Lastly, Plaintiffs have not caused this crisis themselves. Plaintiffs learned of
 25 this subpoena only by the third party after the close of expert discovery, never
 26 received notice of the subpoena or a copy of the subpoena itself, and the date for
 27 compliance is for after the close expert discovery. (Leap Decl. at ¶ 2-4). Plaintiffs

1 timely served procedural and substantive objections to the subpoena and requested
 2 that Defendants withdraw the subpoena. *Id.* After the date of compliance,
 3 Defendants continue to insist that the third party comply, but are also refusing to file
 4 a motion to compel those responses, which Plaintiffs would oppose. *Id.* ¶ 8. Out of
 5 an abundance of caution, therefore, Plaintiffs thereafter filed this *ex parte*
 6 application to request the Court quash Defendants Jose Zavala and Julio
 7 Quintanilla's third-party subpoena.

8 Plaintiffs' *ex parte* application-motion is based on this notice; all pleadings,
 9 papers, and records in this action' attached memorandum of points and authorities;
 10 and upon such other oral and documentary evidence or argument as may be
 11 presented at the hearing of this motion, if any.

12

13 **NOTICE OF CONFERENCE OF COUNSEL PER LOCAL RULE 37:**

14 This motion is made following Plaintiffs' counsel's efforts to meet and confer
 15 with defense counsel, notifying counsel for Defendants of their objections to the
 16 subpoena and requesting Defendants withdraw the subpoena, in an effort to avoid
 17 wasting the valuable time of the court and the parties on April 3, 2024. (Leap Decl.
 18 at ¶ 3). On April 11, 2024, defense counsel confirmed that they would not be
 19 withdrawing the subpoena. (Leap Dec. at ¶ 8-9). The parties were unable to resolve
 20 the issues between them so as to avert the need to bring this instant motion.

21 Pursuant to Local Rule 7-19, defense counsels' names, addresses, telephone
 22 numbers, and e-mail addresses are as follows:

23 Muna Busailah
 24 Sherry Lawrence
 25 Stone Busailah, LLP
 26 1055 East Colorado Blvd., Suite 320
 27 Pasadena, California 91106
 Telephone: (626) 683-5600
 Email: M.busailah@police-defense.com

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1 Ty Ford
2 Deputy City Attorney
3 Los Angeles City Attorney's Office
4 200 North Main Street, 6th Floor
5 Los Angeles, California 90012
Phone: 213-978-6900
Email: ty.ford@lacity.org

6 On April 11, 2024, Plaintiffs' counsel notified defense counsel, Ms. Busailah by
7 phone of Plaintiff's intent to file an *ex parte* application on April 12, 2024 with this
8 Court regarding their refusal to withdraw the non-served and non-noticed subpoena.
9 (Leap Decl. at ¶ 8). Ms. Busailah communicated that she intended to oppose the *ex*
10 *parte* application, in part, on the basis that Plaintiffs would not have standing to
11 object to the subpoena. *Id.* Plaintiffs' counsel subsequently notified counsel for
12 Defendant City of Los Angeles that Plaintiffs intended to file the instant *ex parte*
13 application by the end of the day on April 12, 2024. *Id.* at ¶ 9. Counsel for
14 Defendant City of Los Angeles, Ty Ford, advised that the City would be joining the
15 individual defendants' opposition. *Id.* Plaintiffs' counsel notified defense counsel
16 that they would have 24 hours to file their response to Plaintiffs' *ex parte*
17 application. *Id.* at ¶ 8-9.

18
19 Dated: April 12, 2024

LAW OFFICES OF DALE K. GALIPO

20
21
22 By: /s/ Shannon Leap

23 Dale K. Galipo
24 Renee V. Masongsong
25 Shannon Leap
26 *Attorneys for Plaintiffs*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. *Ex Parte* Relief is Proper to Avoid Undue Prejudice in Light of the Pressing Pre-Trial Deadlines and Trial.

The standard for granting *ex parte* relief requires an evidentiary showing of good cause that: (1) “the moving party’s cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures;” and (2) “the moving party is without fault in creating the crises that requires *ex parte* relief, or that the crisis occurred as a result of excusable neglect.” *See Adam v. Brown*, 714 Fed. Appx. 663, 665 (9th Cir. 2017) (standard for *ex parte* relief recognized and applied); *Mission Power Eng’g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995); *accord Apodaca Promotions, Inc. v. Nuccio*, 2010 U.S. Dist. West. (C.D. Cal. 2010). Although *ex parte* applications are for extraordinarily urgent relief and should be used and granted with discretion, the Court is empowered to shorten the time of notice and/or to advance the hearing of a motion before it, in effect bypassing the regular noticed motion procedures of the Federal Rules and/or local rules, *See Id.*; Fed. R. Civ. P. 6(c)(1)(A), (C); U.S. Dist. Ct.; C.D.C.A. L.R. 7-19-20.

In determining irreparable prejudice, a court will usually need to refer to the proposed motion to ensure it has merit, “because, if it is meritless, failure to hear it cannot be prejudicial.” *Mission Power Eng’g Co.*, 883 F. Supp. at 492. The court may employ a “sliding scale” to measure the threat of prejudice: the less severe the prejudice, the proposed motion must have a higher likelihood of success on its merits; the more severe the threat of harm, “then it is sufficient to show that there are close issues that justify the court’s review” before the harm is suffered. *Id.* The moving party must establish that it was not responsible for the creation of the crisis, or guilty of only excusable neglect. *Id.* at 493.

1 Plaintiffs establish both prongs. Absent *ex parte* relief, Plaintiffs will be
 2 irreparably harmed because they were never notified of the subpoena, nor have they
 3 ever been served a copy of the subpoena. (Leap Decl. at ¶ 2-3). Furthermore,
 4 Plaintiffs did not even learn about the subpoena until after the close of expert
 5 discovery, and the date of compliance for the subpoena was for after the close of
 6 expert discovery. *Id.* Plaintiffs were therefore not afforded the due process Federal
 7 Rule of Civil Procedure, Rule 45 requires. Rule 45(d) requires notice be provided to
 8 all parties in a case to ensure that a party may object and initiate the meet and confer
 9 process and procedure of filing a motion to quash if necessary. Here, Plaintiffs have
 10 been deprived of these due process rights in Defendants Julio Quintanilla and Jose
 11 Zavala's failure to notice all parties of the subpoena, failure to provide Plaintiffs a
 12 copy of the subpoena, and failure to serve the subpoena in accordance with the
 13 deadlines set forth in this Court's scheduling order. (Dkt. No. 27, 44). Defendants
 14 cannot simply ignore the Federal Rules of Civil Procedure and this Court's
 15 scheduling order in an attempt to obtain privileged records of a non-party as they
 16 have done in this case.

17 For the same reasons, Plaintiffs have also not caused this crisis themselves.
 18 Immediately upon learning that Defendants issued a subpoena to the third-party
 19 Riverside County Sheriffs' Department for the employment records of Plaintiffs'
 20 retained expert Scott A. Defoe, Plaintiffs served their objections on all parties
 21 (including the third party), sent meet and confer correspondence to the serving party,
 22 and sent a letter to counsel for the third party requesting they not produce the
 23 records. (Leap Decl. at ¶ 4). On April 5, 2024, Counsel for the third party notified
 24 Plaintiffs' counsel and counsel for the individual Defendants that they would not be
 25 complying with the subpoena and indicated in his communication that he and
 26 Defendants had agreed that a Motion to Quash would be unnecessary. *Id.* at ¶ 5, 15.
 27 On the afternoon of April 9, 2024, Mr. Sherman notified Plaintiffs' counsel that

1 counsel for the individual defendants were insisting on his client complying with
 2 their subpoena. *Id.* at ¶ 7. Therefore, in an abundance of caution, Plaintiffs feel it
 3 necessary move this court for an *ex parte* application and motion to quash
 4 Defendants' untimely, non-noticed, and unserved subpoena for privileged
 5 documents.

6 Notably, whereas Plaintiffs timely designated Scott DeFoe as their police
 7 practices expert in this case, complied with Rule 26 by timely producing his report,
 8 and produced Mr. DeFoe for deposition, Defendants to date have not produced any
 9 Rule 26 report by their purportedly retained expert James Borden in this case. In an
 10 unrelated civil case handled by Plaintiffs' counsel Dale Galipo and Shannon Leap,
 11 Mr. Borden testified that he never reviewed any materials in the above-referenced
 12 matter, never made any opinions, and never wrote a report. Plaintiffs noticed Mr.
 13 Borden's deposition, inquired about the "forthcoming" report, and ultimately served
 14 defense counsel with a "meet and confer" letter giving notice of Plaintiffs' intent to
 15 file a motion in limine to exclude Mr. Borden for failure to comply. Defense
 16 counsel never acknowledged the deposition notice or made Mr. Borden available for
 17 deposition. *Id.* at ¶ 11.

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19 **II. Defendants Jose Zavala and Julio Quintanilla's Third-Party**
20 Subpoena is Procedurally Defective and Therefore Void and
Unenforceable.

21 Federal Rule of Civil Procedure, Rule 45 (a)(1)(D)(4) specifically provides
 22 that a notice and copy of a subpoena commanding "the production of documents,
 23 electronically stored information, or tangible things" [be served on each party]
 24 "before it is served on the person to whom it is directed." Fed. R. Civ. Pro., Rule 45
 25 (a)(1)(D)(4). This notice requirement gives Plaintiffs standing to object to the
 26 subpoena, as does the fact that the subpoena is regarding Plaintiffs' retained expert's
 27 privileged employment history. *Littlefield v. NutriBullet, L.L.C.*, No. CV 16-6894

1 MWF (SSX), 2018 WL 5264148 at *4 (C.D. Cal. Jan. 22, 2018). The Rule is
 2 unambiguous: parties must be notified. No member of Plaintiffs' counsel were
 3 served either a notice or copy of the subpoena prior to the service of the subpoena
 4 on the third party. (Leap Decl. at ¶ 3). To date, Plaintiffs still have not been served
 5 notice or a copy of the subpoena, despite notifying the serving party of this
 6 deficiency. *Id.* at ¶ 3, 8. Therefore the defect has not been cured.

7 The Advisory Committee Notes to Rule 45(a) note that the rule was
 8 specifically amended in 2013 to "achieve the original purpose of enabling the other
 9 parties to object or serve a subpoena for additional materials." Advisory Committee
 10 Notes, 2013 Amendment, Fed. R. Civ. P. 45(a). Although Plaintiffs were able to
 11 serve their objections to the subpoena prior to the compliance date, they were unable
 12 to serve their objections prior to the fact or expert discovery cutoff deadline, and
 13 therefore initiate the meet and confer process in accordance with this Court's
 14 scheduling order.

15 In addition, Defendants Julio Quintanilla and Jose Zavala served their
 16 subpoena on third party Riverside County Sheriffs' Department nine days before the
 17 expert discovery cutoff and for a compliance date of April 8, 2024 – after the expert
 18 discovery cutoff deadline. (Leap Decl. at ¶ 2; Dkt. No. 44). This Court's scheduling
 19 order provides that "[t]he cut-off date for discovery is not the date by which
 20 discovery requests must be served; it is the date by which all discovery, including all
 21 hearings on any related motions, must be completed. Thus, written discovery must
 22 be served... sufficiently in advance of the discovery cut-off date to permit the
 23 propounding party enough time to challenge the responses deemed to be deficient
 24 via motion practice. Given the requirements to meet and confer and to give notice, a
 25 planned motion to compel must ordinarily be discussed with the opposing party at
 26 least six (6) weeks before the cut-off." (Dkt. No. 27 at 4:6-11, emphasis included in
 27 original).

1 Though Plaintiffs' counsel still has not been served with a copy of the subpoena,
 2 to the best of Plaintiffs' counsel's knowledge, Defendants served this subpoena on
 3 March 20, 2024, over a month after fact discovery closed and only nine days before
 4 expert discovery closed. (Leap Decl. at ¶ 2-3). The date for compliance with the
 5 subpoena fell over a week after the close of expert discovery. Defendants could have
 6 served this subpoena prior to the fact discovery cutoff, given that Plaintiffs disclosed
 7 Mr. DeFoe's Curriculum Vitae (which noted that Mr. DeFoe was employed at the
 8 Riverside County Sheriffs' Department from 2013-2014) on the expert disclosure
 9 deadline of February 16, 2024, four days prior to the fact discovery cutoff. (Leap
 10 Decl. at ¶ 11). Defendants' subpoena simply does not comply with this Court's
 11 order and should be quashed on that basis as well.

12 Courts in this district have confronted similar situations, finding such
 13 procedurally defective subpoenas invalid. For example, Plaintiffs' subpoenas served
 14 several days prior to the close of fact discovery were deemed untimely and their
 15 insistence on enforcing compliance with the defective subpoena a "thinly veiled
 16 attempt to get around the already-expired discovery deadline." *See Glob. Master*
 17 *Int'l Grp., Inc. v. Esmond Nat., Inc.* No. 219CV10360RGKPLA, 2021 WL 3260606
 18 at *4 (C.D. Cal. Apr. 30, 2021). In *Global Master*, the Plaintiffs served a third-party
 19 subpoena several weeks before the completion of the fact discovery cutoff date with
 20 a date of compliance several days before the cutoff date. *Id.* at * 2. Because the
 21 subpoena was not served sufficiently ahead of the discovery cutoff date, the district
 22 court upheld the Magistrate Judge's ruling that the subpoenas were untimely. *Id.*
 23 Similarly, a subpoena served within the discovery period, but with a compliance
 24 date a few days before the cut off date was deemed untimely because it did not
 25 permit the challenging party sufficient time to challenge by motion responses
 26 deemed to be deficient. *MAP Co. v. Lebanese Arak Corp.*, No.
 27

1 CV1605039ABRAOX, 2017 WL 10434017 at * 5 (C.D. Cal. Oct. 26, 2017). The
 2 same is true in this case.

3 Similarly, courts have found that such compounded procedural defects in a
 4 subpoena can cause undue burden on the parties, such that granting a motion to
 5 quash the subpoena is sufficient, independent of the underlying substantive requests
 6 of the subpoena. *See Thompson v. Cnty. of Riverside*, No. 5:19-CV-00122-AB-SHK,
 7 2023 WL 8168859 (C.D. Cal. July 26, 2023), reconsideration denied, No. 5:19-CV-
 8 00122-AB-SHK, 2023 WL 6194322 (C.D. Cal. Aug. 7, 2023). In *Thompson*, the
 9 court granted defendants' motion to quash plaintiff's subpoenas for deposition on
 10 the basis that the subpoenas were improperly noticed and served in violation of
 11 multiple rules and that they placed an undue burden on the defendants and
 12 deponents. *Id.* at 8-9. The court quashed these subpoenas in spite of the potential
 13 relevant information that could have been obtained through the depositions. *Id.*

14 **III. The Records Sought are Privileged.**

15 The "scope of discovery permitted by subpoena under Rule 45 is the same as
 16 that permitted under Rule 26," meaning that "a party may obtain discovery of any
 17 matter that is relevant to a claim or defense and that is 'proportional to the needs of
 18 the case, considering the importance of the issues at stake in the action, the amount
 19 in controversy, the parties' relative access to relevant information, the parties'
 20 resources, the importance of the discovery in resolving the issues, and whether the
 21 burden or expense of the proposed discovery outweighs its likely benefit.' " *In re*
 22 *Perez by Allen*, No. 20-mc-80191-VKD, 2020 WL 7056024, at *2 (N.D. Cal. Dec.
 23 2, 2020) (citing Rules 45 and 26(b)(1)). Federal Rule of Civil Procedure, Rule 26
 24 provides that a court may limit discovery to protect from annoyance,
 25 embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26 (b)(1).
 26 Further, discovery is limited to nonprivileged matters. *Id.* Federal common law
 27 recognizes a qualified privilege for official information. *Kerr v. United States Dist.*

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1 *Ct. for N.D. Cal.*, 511 F.2d 192, 198 (9th Cir.1975), aff'd, 426 U.S. 394, 96 S.Ct.
 2 2119, 48 L. Ed. 2d 725 (1976). Government personnel files are considered official
 3 information. *See, e.g., Zaustinsky v. University of Cal.*, 96 F.R.D. 622, 625 (N.D.
 4 Cal. 1983), aff'd, 782 F.2d 1055 (9th Cir. 1985). The documents sought in
 5 Defendants' subpoena implicate Mr. DeFoe's right to privacy under California and
 6 Federal law and therefore should not be produced. *Sanchez v. City of Santa Ana*, 936
 7 F.2d 1027 (9th Cir. 1990), as amended on denial of reh'g (Feb. 27, 1991), as
 8 amended on denial of reh'g (May 24, 1991).

9 Indeed, these are the arguments made by counsel for the individual officer
 10 defendants in nearly every police misconduct case that Mr. Galipo's office has
 11 handled when served with a discovery request for the officers' personnel files. If
 12 Defendants believe they are entitled to the personnel files of an expert witness, then
 13 Defendants should not be permitted to argue against production of the personnel
 14 files of the named officer defendants. Notably, the City of Los Angeles listed the
 15 personnel records of the involved officers in this case on their privilege log in
 16 response to Plaintiffs' discovery requests. Mr. Galipo's office has handled hundreds
 17 of police misconduct cases and not once have counsel seen a subpoena for the
 18 employment and personnel records of Plaintiffs' retained police practices expert, let
 19 alone one that is improperly noticed and for whose date of compliance is after all
 20 discovery cutoff dates. (Leap Decl. at ¶ 10).

21 Moreover, requesting all employment records is overbroad, harassing and
 22 oppressive. In this case, where Mr. Defoe is an expert and not an actual party to the
 23 case, Defendants' subpoena constitutes a fishing expedition that is not reasonably
 24 calculated to lead to the discovery of admissible evidence. Mr. DeFoe worked at the
 25 Riverside County Sheriff's Department for only one year, making these records of
 26 questionable relevance. If these records are produced over Plaintiffs' objection,
 27 then Plaintiffs would move to exclude the records for use at trial through a motion *in*

1 *limine*, and this anticipated law and motion would not be an efficient use of judicial
2 resources.

3 **IV. Closure of Fact and Expert Discovery Does Not Preclude This Court**
4 **From Re-Opening Discovery For the Sole Purpose of Ruling on The**
5 **Instant Motion.**

6 If the Court finds that it is necessary to reopen fact discovery under Federal
7 Rule of Civil Procedure 16(b)(4), for the sole purpose of considering Plaintiffs'
8 application and motion, good cause exists to do so. Plaintiffs are not seeking to
9 change any existing dates, nor will Plaintiffs' request impact existing dates,
10 including the trial date. Furthermore, Defendants will suffer no prejudice if the
11 scheduling order is modified because all dates will remain as scheduled, and
12 Defendants will have an opportunity to respond to Plaintiff's motion.

13 **V. Conclusion**

14 For the foregoing reasons, Plaintiffs respectfully request this Court grant *ex*
15 *parte* relief to quash Defendants' subpoena. If this Court finds that it may not do so
16 without modifying the Scheduling Order to reopen Fact Discovery, Plaintiffs request
17 the Court do so, if for the sole purpose of considering Plaintiffs' proposed motion.

18
19
20 DATED: April 12, 2024

LAW OFFICES OF DALE K. GALIPO

21
22 By: /s/ Shannon Leap

23 Dale K. Galipo
24 Renee V. Masongsong
Shannon Leap
25 Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Plaintiffs certifies that this brief contains 3,864 words, which complies with the word limit of L.R. 11-6.1.

By: /s/ Shannon J. Leap
Shannon J. Leap
Attorney for Plaintiffs